

EXHIBIT 3

Pat Orsaia

of Cathy's comment, and then she asked me if that was ageism.

Q. During the course of this meeting, did you, when Ms. Newmark mentioned the young, and "younger," and "ageism," did you ever write this down?

A. I did not.

Q. Why?

A. I asked Carole to clarify for me what she thought this meant. I asked her to clarify what ageism was. I have already testified, I did not write it down.

Q. Why didn't you?

A. I didn't feel it was necessary.

Q. Why not?

A. In my role I have conversations with team members all day long in my office and at other locations around the hospital. They will oftentimes share a concern. I don't write notes or ask them to write a statement about everything they talk to me about.

Q. Is there a discrimination policy at Lawrence that was present when you were HR director?

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form.

Q. Did you -- in the e-mails you're referencing, did you ever say, this is what Ms. Newmark said, in those e-mails?

A. I believe there is one e-mail that I sent to Cathy Magone, where I referenced that I had provided Cathy's clarification around the comment to Carole and that Carole remained upset about it and not accepting of Cathy's explanation.

Q. Did --

A. And I put that in an e-mail to Cathy Magone.

Q. Did you use the word "young" or "younger," or anything of that nature?

A. I believe I said, Carole was still unclear or upset about Cathy's use of the word "young."

Q. That was in reference to the second meeting with Ms. Magone? There was a second meeting where Ms. Newmark was present, as well as Ms. Magone?

A. That's correct.

Q. Following that meeting, Ms. Newmark had written to you that she still had concerns;

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A. Could you be more specific in the question?

Q. What did Ms. Newmark say to you when she first communicated her concern about Cathy Magone's reference to "young" and Nicole Serra?

A. Ms. Newmark told me that in her explanation of why Nicole was selected for the palliative-care project, that Cathy Magone had used the word "young" in reference to Nicole.

Q. Did she say how Ms. Magone had used the word "young"?

A. I believe Carole said it was something to the effect of, Cathy told her Nicole was young and eager to learn, or could use the experience, or something like that. It was really the use of the word "young" that Carole was focused on.

Q. As you sit here today, do you recall what Ms. Newmark said in reference to the word "young"?

A. Just what I have just stated.

Q. Apart from that, anything else you recall she said to you at that time?

A. In reference to the use of the word

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"young"?

Q. Yes.

A. Only that she, Carole, questioned me. Something like, isn't that ageism, is the way she put it to me.

Q. What response, if any, did you have for her?

A. I actually asked her to clarify what she meant by "ageism."

Q. Why?

A. Because it wasn't a term I was familiar with.

Q. And what was her response?

You were not familiar with the word "ageism"?

A. Correct.

Q. What was her response?

A. Her response was that her perception was that Cathy was telling her that Nicole had been selected for the palliative-care project because she was younger in age than Carole.

Q. As the HR director at that time, you didn't know what "ageism" meant?

A. I thought it was important for

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Carole to clarify.

Q. I'm asking, at the time when you asked her what "ageism" meant, you didn't know what that word meant?

A. I was not familiar with the use of the word "ageism" as a term that could be used interchangeably with age discrimination, no.

Q. Did you ever -- did you look up the definition?

A. No. I asked Carole to clarify for me what she meant by the term "ageism" in the context that she was presenting it to me.

Q. What did she say to you?

A. I believe I just stated what she said to me.

Q. What did she say?

A. She said what she meant by "ageism" is that her perception is that Cathy's use of the word "young" in the explanation as to why Nicole was selected for the palliative-care project, was a reference to the fact that Nicole was younger than Carole, and that is why she was selected for the approach.

Q. Didn't she, in fact, say that

1 *Pat Orsaia*

2 explanation about why Nicole was selected for the
3 palliative-care project.

4 MS. NICAJ: I'm going to
5 move to strike as nonresponsive.

6 Can you read the question back.

7 *(Question read)*

8 A. No.

9 Q. What, if anything else, did she say
10 to you during this initial exchange with
11 Ms. Newmark?

12 A. Ms. Newmark told me in this same
13 conversation that -- I don't remember her exact
14 words, but she indicated to me that she was not
15 entirely comfortable with her role in the
16 department with Cathy Magone as her director and
17 wasn't entirely comfortable -- or maybe had not
18 entirely adjusted to the case-management model of
19 work that was used at Lawrence. And that may
20 have been when Ms. Newmark reminded me that she
21 had come most recently from the mental-health
22 work environment, and it was different in the
23 acute-care environment; there is no question
24 about it. And I believe that Carole, during that
25 initial conversation, even said to me that she

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wasn't sure if her job at Lawrence was the right

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one for her at that point. And I believe she

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said something like, maybe it's too soon to tell;

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or, you know, I'm early in my tenure. Whatever

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it was.

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Q. Did you write any of this down?

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A. No.

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Q. Okay. Did you communicate that with

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anyone?

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A. No.

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Q. Did she say anything else to you?

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And when you say you believe, and

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you believe, what is the basis of your belief?

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Because with all due respect, I don't care about

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your belief; I'm interested in your memory. So,

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what is the basis of your belief?

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A. When I say "I believe," what I'm

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providing is my best recall of what was shared in

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that conversation.

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Q. So, it's more than your belief; it's

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your actual recollection? Is that what you're

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saying?

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A. Yes.

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Q. And what, if anything, did you tell

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her in response?

A. In response to everything that Carole had shared with me in that initial conversation, I suggested to her that it was important that we clarify -- address her concern and clarify what Cathy had said and what the intent of her comments were.

And I told Ms. Newmark that I understood her concern; that we should definitely follow up on it. And I offered her a couple of optional ways to do that.

Q. What were those?

A. I offered her the option of -- if she was comfortable doing so, I suggested to her that a first option would be for Ms. Newmark to schedule some private time with Cathy Magone and ask for clarification, and let her know what her perception was of their discussion and how she was feeling about the assignment of the projects.

I offered her another option of the three of us meeting - Cathy Magone, Ms. Newmark and myself - for a similar discussion.

And I offered her a third option of my taking her concern to Cathy Magone separately,

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seeking the clarification that she was asking and coming back to her with a response.

Those were the options.

Q. Did you say anything during this interchange with Ms. Newmark?

A. I may have. After presenting the options, I may have asked Carole if she wanted to think about the options and let me know at some later time how she wanted to proceed; or we may have determined it right there, because the option that she chose was for me to contact Cathy Magone, separately, seek the clarification to address her concerns and come back to her with a response.

And that's what we actually did.
That's what I actually did.

Q. Do you recall anything else that was said by you or Ms. Newmark at this meeting?

A. No.

Q. How long did this meeting last?

A. To the best of my recollection, fifteen to twenty minutes.

Q. You indicated that she took the third option of you speaking to Ms. Magone,

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separately?

A. Yes.

Q. Did she communicate the third option to you at that meeting or at some other point?

A. Well, I have already stated that I don't recall exactly if she said to me at that point, I'm not comfortable meeting with Cathy; I would prefer that you go back and get the clarification, or whether she called me sometime shortly thereafter and suggested that I contact Cathy, separately.

Q. Did you do that, communicate with Ms. Magone?

A. I did.

Q. How long after your meeting with Ms. Newmark?

A. I don't recall exactly. What I do recall is, being the time of year that all this was happening, it is possible that Cathy Magone may have been actually on vacation at the time that Carole saw me initially about her concerns or had been going on vacation.

I know in this time frame, over the six-week period or so from the end of August

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to -- or four-week period from the end of August to the end of September, that I believe I had a full week planned vacation.

I believe that Cathy Magone was out for some period of time, and I believe that Carole was out for some period of time. So, I don't remember exactly. We may have had to delay my initial conversation with Cathy Magone because of availability.

Q. Did you communicate with Ms. Magone what the intent of your meeting with her was going to be, separate and apart from the fact that you wanted to meet with her to discuss these concerns? Did you tell her what they were going to be about?

A. Yes.

Q. When? When did you first do so?

A. I don't recall the exact date.

Q. How was this -- by e-mail, or telephone, or something else?

A. My best recollection is that I contacted Cathy by telephone, first, to tell her that I had met with Carole and that Carole had voiced some concerns and that I would like to

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meet with her and go into detail about it.

Q. Did you tell her, Ms. Magone, what those concerns were?

A. I don't recall if we spoke in detail on the phone. I don't believe so. I believe that we spoke in person.

Q. Did you discuss anything on the telephone concerning Ms. Newmark, expressing what she had related to you about Nicole Serra's appointment to the position?

A. I don't recall. It's possible that I did.

Q. I'm going to direct your attention to what has been marked as Plaintiff's Exhibit 4, which was previously marked at Ms. Magone's deposition.

Directing your attention to Plaintiff's Exhibit 4, have you seen that?

A. Yes.

Q. What is that?

A. This is a printout from our e-mail system, Microsoft Outlook, used at Lawrence Hospital Center. And it tells me that -- it's the e-mail system, telling me that a meeting I

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2006, about her concerns relating to Cathy Magone?

A. Yes.

Q. Do you know when, in relation to August 21, 2006, Ms. Newmark had met with you to discuss these concerns?

A. I don't know the exact date.

Q. Would that be in your calendar, too?

A. Possibly.

Q. When did you meet with Ms. Magone?

A. I don't know the exact date. I can only assume from this that it was after August 21st.

Q. How long was your meeting with Ms. Magone?

A. To the best of my recollection, approximately, fifteen minutes.

Q. Did you reduce anything she said to you or you said to her at this meeting, in writing?

A. No.

Q. Did you take any notes?

A. No.

Q. Was there anyone else present?

A. No.

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Q. who spoke first at this meeting?

A. who spoke first at the meeting? I'm not sure what you mean. Did we greet each other? Did I say hello first? Did she say hello first? I'm not sure what you mean.

Q. who spoke first?

A. I don't recall.

Q. what did -- withdrawn.

what, in words or substance, did you say at this meeting?

A. At my meeting with Cathy Magone, I relayed to her the concerns that Carole Newmark had shared with me.

Q. what did you say to Ms. Magone?

A. I told Cathy Magone that Carole had asked to see me, that she was upset about the assignment of the project to Nicole, and that her perception was that that decision to assign Nicole to the project may have something to do with Nicole's age or Carole's age.

I then asked Cathy Magone if she had used the word "young" in her discussion with Carole. And I explained to Cathy that Carole seemed to be focused on her use of the word

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"young," and I asked her if she used the word.

Q. And was there anything else you said to her at this meeting?

A. Yes. We -- Cathy answered my question.

Q. What did she say?

A. She said that -- she thought for a minute, and she said that, as she recalled, she had referenced the fact that Nicole was younger in her career and eager to learn. And Cathy told me that she thought that her use of the word "young" had been taken out of context by Carole.

Q. Did she say anything else to you?

A. She expressed her surprise. She said that -- she talked to me about the decision to assign Nicole to the palliative-care project. She told me that she had made the decision based on input from others - specifically, Roseanne O'Hare, vice-president of patient-care services, and also feedback from Maura DeBene, who was the registered nurse assigned to the palliative-care program. And that the feedback from both of them was that they were looking for Nicole to be assigned to the project.

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Q. whose decision was it?

A. It was Cathy Magone's decision, as far as I know.

Q. Anything else that she said to you at this meeting --

MS. NICAJ: Withdrawn.

Q. Was there anything else that Cathy Magone said to you at this meeting?

A. Yes.

Q. What?

A. She explained to me that Carole had been previously assigned to another project, based on Carole's experience in that area, that was a mental-health project. And Cathy shared with me at that time that Carole had been assigned to the mental-health project and had not begun to do whatever work was involved with that project.

Q. Did she tell you when she had been assigned to do this project?

A. Not at that meeting, I don't believe she did. It was prior to the assignment of the palliative-care project to Nicole.

Q. Do you know when that project was

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due?

A. No, I don't.

Q. Do you know what Ms. Newmark had to do with respect to the project?

A. No.

Q. Did you ask her? Did you ask Ms. Magone?

A. No.

Q. In connection with your duties and responsibilities as director of HR, did you see any communications with respect to Ms. Newmark's failure to do something concerning that mental-health project, prior to your meeting with Ms. Magone?

A. No.

Q. What else did Ms. Magone say to you during this meeting?

A. She indicated that they thought it was important that her comment and use of the word "young" be clarified to Carole and her concerns be addressed.

Q. Whose concerns?

A. Ms. Newmark's.

Q. What, if anything, did you say to

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Ms. Magone?

A. I told her that, as promised to Ms. Newmark, that I was going to take her clarification of the use of the word "young" back to Ms. Newmark as soon as I could.

Q. What, if anything, did you do?

A. That is what I did.

Q. So, when you said you told her, you then communicated what Ms. Magone said to Ms. Newmark?

A. Yes.

Q. How?

A. I believe it was by phone.

Q. You believe it was, or was it?

A. Yes; to my best recall, it was by telephone initially.

Q. And did you, in fact, speak to Ms. Newmark?

A. Yes.

Q. What, in words or substance, did you say to her?

A. I told Ms. Newmark that I had spoken with Cathy Magone. I relayed her concerns of Cathy's use of the word "young" in relation to

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the assignment of the project.

I told Ms. Newmark that Cathy Magone's clarification was that she thought Carole had taken the word -- her use of the word "young" out of context. And what she, in fact, remembered saying, and what the tenor of her statement was, was that Nicole was younger in her career, and this was a good learning opportunity for her. She was eager to learn, et cetera.

Q. What did Ms. Newmark say to you?

A. Ms. Newmark indicated that she didn't find that clarification by Cathy Magone to be acceptable.

Q. Did she tell you why?

A. Ms. Newmark disagreed with what Cathy stated as to her use of the word "young."

Q. What did she say with respect to that?

A. She said that Cathy Magone did not say that Nicole was younger in her career.

Q. What did she say that Ms. Magone said?

A. As I recall, Ms. Newmark simply said that Cathy Magone had used the word "young" in

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agreement with it. And that Carole and I both thought it would be helpful for the three of us to meet and continue to discuss it.

Q. What, if anything, did Ms. Magone say to you?

A. She agreed.

Q. Was there anything else said?

A. Not that I recall.

Q. During this interchange --

A. Not that I recall. Once again, there may have been some discussion about trying to set up the meeting because of people's availability.

Q. Between that telephone conversation with Ms. Magone, and the actual meeting with Ms. Magone and Ms. Newmark, did you have any other communications with Ms. Magone relating to Ms. Newmark?

A. To my best recollection, I did; because at some point prior to the meeting that the three of us had, I had some conversation with Cathy Magone about Ms. Newmark's attendance and performance concerns on Cathy Magone's part.

Q. When did you have those? How many

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communications did you have with Ms. Magone concerning that?

A. I believe it was one conversation.

Q. When?

A. I don't know the exact date.

Q. After September 12th?

A. I don't know exactly. I believe it was after September 12th.

Q. Was this in writing?

A. No.

Q. Did you reduce anything she said to you in writing?

A. No.

Q. Did you ask her for anything in writing?

A. No.

Q. So, between your -- after you spoke to Ms. Magone about Ms. Newmark telling you that she didn't find Ms. Magone's statements -- withdrawn.

She disagreed with Ms. Magone's statements, after that statement that Ms. Newmark made to you and the actual meeting between the three of you, at some point Ms. Magone spoke to

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you about Ms. Newmark's performance?

A. Yes.

Q. Prior to that time, had she communicated with you about Ms. Newmark's performance?

A. Prior to that, when I had spoken to Cathy about the project assignment and Cathy had explained to me that she had gotten feedback from the two sources I have already mentioned - Roseanne O'Hare and Maura DeBene - about who they would prefer to have assigned to the project; at that time, Cathy indicated to me that part of their feedback in relation to Carole was not positive. And that was part of the feedback that they gave to Cathy about their preference to have Nicole assigned to the project, instead of Carole.

Q. Apart from that, was that communication that you had with Ms. Magone -- that was in reference to when Ms. Newmark had expressed her concern to you about Ms. Magone referring to the reasons Ms. Nicole Serra was selected instead of her; is that right?

A. Yes.

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discussing those age-related comments that
Ms. Newmark had expressed concern about, had
Ms. Magone ever come to you, concerning
Ms. Newmark?

A. Not that I recall.

Q. Getting back to the second time
where you say there was -- withdrawn.

You indicated that Ms. Magone
expressed to you some concern about Ms. Newmark's
performance and her unplanned absences at some
point.

A. Yes. At some point, Cathy brought
that to my attention.

Q. That was after September 12th, 2006;
is that right?

A. I don't know.

Q. Was that after your communication
with her, your initial communication with her
concerning Ms. Newmark's expression of concern?

A. I think I first became aware of
concerns with Ms. Newmark's attendance pattern
after Ms. Newmark told me that she had
requested -- or not requested; she had advised
Cathy Magone that she needed some time off for

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some medical testing. And I think at that point, Ms. Newmark told me that Cathy had spoken to her in regard to this request, in regards to the fact that she had already had some unplanned time off, and that I believe it had been communicated -- according to Ms. Newmark -- to her, by Cathy Magone at that point, that the time off she was requesting for the medical testing, was not approved.

And that at some point -- I'm not sure if in this same conversation -- Carole told me then Cathy had reconsidered and it was approved, or if that happened later on.

Q. Do you know when that occurred?

A. No, I don't.

Q. Was it around the time of September 12, 2006?

A. I don't know exactly.

Q. Do you know whether it was before or after -- withdrawn.

Getting back to your communication with Ms. Magone, what did she say to you were her concerns about Ms. Newmark's performance?

A. Cathy Magone told me that in

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considering her decision to assign Nicole to the palliative-care project, that she had gotten feedback from Roseanne --

Q. I don't mean to interrupt you. Was this the conversation you relayed during your telephone -- was this the communication wherein you expressed to Ms. Magone what Ms. Newmark had told you about the age-related comments, or was this at some other point?

A. It was during that conversation.

Q. Okay. I'm not going to rehash it, unless you haven't told me something about that conversation.

A. I believe I have told you what I recall about it.

Q. There was a second communication. You relayed to me that you -- that Ms. Magone expressed some concern about performance and unplanned absences on the part of Ms. Newmark after that. And you said it was sometime between September 12th, and the meeting with the three of you - Ms. Newmark, Ms. Magone and yourself?

A. Yes. To the best of my recall, at the time that Carole and Cathy and I met, the

1 *Pat Orsaia*

2 three of us, I already had some sense of a
3 concern about attendance and performance prior to
4 that meeting. I don't know exactly when I became
5 aware of it.

6 Q. You had some sense.

7 Did you meet with Ms. Magone about
8 this?

9 A. Well, as I have stated, I believe it
10 was Carole Newmark, herself, who first brought up
11 the issue of her attendance pattern with me.

12 Q. I'm not asking about Carole Newmark.
13 I'm asking you a specific question relating to
14 Cathy Magone, okay?

15 So, going back to my previous
16 question --

17 A. I don't know if I met with her or if
18 we spoke by telephone or -- I don't recall.

19 Q. Do you recall when the meeting took
20 place between you, Ms. Newmark, and Ms. Magone?

21 A. I believe it was September 28th.

22 Q. Do you recall how long prior to
23 September 28th, you communicated with Ms. Magone
24 concerning Ms. Newmark's performance, apart from
25 that initial exchange that was the result of her

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explaining to you why she had not selected
Ms. Newmark?

A. I don't know exactly when that took
place. I do know at some point Cathy Magone, as
department leader, shared with me that she had
performance and attendance concerns with
Ms. Newmark.

We discussed that Ms. Newmark was
still in her probationary period. We talked
about the number of occurrences of unplanned
absences to date. We talked specifically about
the performance concerns. I don't recall exactly
when that was.

Q. Is there any clear-cut rule about
the unplanned absences, the number and so forth?

A. Yes.

Q. What is it?

A. In our policy on attendance, it
states that five or more occurrences -- well,
five -- actually, five occurrences of lateness
and/or unplanned absence, in a rolling,
consecutive twelve-month period, is considered
excessive.

Q. At the time that you communicated